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October 16, 1987

Ms. C. Diane Bishop, Superintendent  
Arizona Department of Education  
1535 West Jefferson  
Phoenix, Arizona 85007

Re: I87-127 (R86-154)

Dear Ms. Bishop:

Your predecessor in office asked whether school districts must provide an individual education program for limited English proficient students whose parents have withdrawn them from bilingual or English as a second language ("ESL") programs as permitted by A.R.S. § 15-752.

We conclude that school districts must provide individual education programs for such students.

A.R.S. § 15-754 provides in pertinent part:

A. Each school district which has ten or more limited English proficient pupils in any kindergarten program or grade in any school shall provide a bilingual program or English as a second language program for the limited English proficient pupils.

B. Each school district which has nine or fewer limited English proficient pupils in any kindergarten program or grade in any school shall provide these limited English proficient pupils with either a bilingual program or English as a second language program as prescribed in subsection A of this section or shall provide an individual education program for each of these pupils which provides a plan for meeting the cultural and linguistic needs of the pupil. An individual education program must be provided for all limited English proficient pupils who are not enrolled in one of the programs described in subsections A and B of this section.

(Emphasis added.)

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The language of the statute is clear and unambiguous. All limited English proficient students who are not enrolled in a bilingual or ESL program must be provided an individual education program. The statute provides no exception to its mandate based upon the reason a student is not enrolled in a bilingual or ESL program.

This literal reading of the statute is consistent with the legislature's stated goal. "The primary goal of such programs is to allow the pupils to become proficient enough in English to succeed in classes taught in English." A.R.S. § 15-752(B). The provision for individual education programs in all cases where bilingual or ESL programs are unavailable, either due to district size or parental withdrawal, promotes the stated goal.

Title VI of the Civil Rights Act of 1964 requires school districts to take affirmative steps to rectify language deficiencies in order to open the instruction to students who are limited English proficient. Lau v. Nichols, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); 42 U.S.C. § 2000d. Additionally, 20 U.S.C. § 1703(f) makes it unlawful for a state to deny equal educational opportunity to an individual by failing to take action to overcome language barriers that impede equal participation in instructional programs. Giving effect to the plain meaning of A.R.S. § 15-754(B) is consistent with these federal statutory requirements. See also, Gomez v. Illinois State Board of Education, 811 F.2d 1030 (7th Cir. 1987); Idaho Migrant Council v. Board of Education, 647 F.2d 69 (9th Cir. 1981).

Accordingly, we conclude that school districts must provide individual education programs for limited English proficient students whose parents have withdrawn them from a bilingual or ESL program pursuant to A.R.S. § 15-752(C).

Sincerely,



BOB CORBIN  
Attorney General

BC:DPS:TLM:pnw